IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 166 OF 2005

SHRI SAVLO S.NAIK,SANGUEM GOA. ....Appellant

Versus

SHRI JOAQUIM S.FERNANDES AND 3 ORS., ...Respondents

Mr. D. N. Moratgikar, Advocate for the appellant.

Mr. V. P. Thali, Advocate for respondents.

Coram:- A. P. LAVANDE, J.

Date:- 28th April, 2006

P.C.

Heard Mr. Moratgikar for the appellant and Mr. Thali for the respondents.

By this second appeal, the appellant takes exception to the Judgment and Decree dated 3.7.2004 passed by the Additional District Judge, South Goa, Margao in Regular Civil Appeal No.175/2002 dismissing the appeal filed by the appellant against the Judgment and Decree dated 30.4.2002 passed by the Civil Judge, Jr. Division, at Sanguem in Regular Civil Suit No. 13/1989.

The appellant is the original plaintiff and the respondents are the origianl defendants in the said suit filed by the plaintiff claiming easementary right of way through the property of the defendants. In the said suit filed by the plaintiff, the defendants No.3 and 4 preferred a counter claim by way of injunction against the plaintiff. The trial Court, upon appreciation of the evidence led by the parties, came to the conclusion that the plaintiff was not successful in establishing his

easementary right of way through the property of the defendants, but, on the contrary, the defendants No.3 and 4 had established their right to their property and interference by the plaintiff. Consequently, the trial Court dismissed the suit and allowed the counter claim filed by the defendants No.3 and 4. The lower appellate Court concurred with the findings given by the trial Court and consequently, dismissed the appeal filed by the plaintiff.

Mr. Moratgikar, learned Counsel on behalf of the appellant submits that both the Courts below have not addressed to the real controversy involved in the suit and the findings given by the Courts below are not borne out of the evidence on record. According to the learned Counsel, the findings recorded by both the Courts below are perverse and, therefore, interference is called for in this appeal.

Per contra, Mr. Thali, learned Counsel on bealf of the respondents submits that there are concurrent findings of facts recorded by both the Courts below and there is no substantial question of law involved in this appeal.

I have perused the Judgments passed by both the Courts below. The findings recorded by both the Courts below for negativing the claim of the plaintiff are borne out of the evidnece on record. In my opinion, the concurrent findings given by both the Courts below do not warrant any interference by this Court. No substantial question of law arises in this appeal and consequently, the appeal is, summarily, rejected with no order as to costs.

A. P. LAVANDE, J.

ssm.